Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	
Establishing the Digital Opportunity Data Collection	WC Docket No. 19-195
Modernizing the FCC Form 477 Data Program	WC Docket No. 11-10

REPLY COMMENTS OF ALASKA COMMUNICATIONS

Alaska Communications offers these reply comments to respond to certain proposals in the record developed in response to the Commission's Notice of Proposed Rulemaking (the "Notice")[1] in the above-captioned dockets. In particular, Alaska Communications supports the framework proposed by AT&T Services, Inc. ("AT&T") for developing polygons depicting availability of fixed wireless broadband, and opposes proposals in the record for the Commission to expand the Digital Opportunity Data Collection ("DODC") to include reporting of broadband pricing data.

Discussion

A. Alaska Communications Agrees that the Commission Should Define Speed Tiers to Govern Broadband Reporting, Including for Fixed Wireless Services

In its comments, Alaska Communications proposed that, to minimize the burden and streamline the results of the DODC, the Commission should establish a set of speed tiers, each covering services across a reasonable *range* of speeds (*e.g., at least* 25 Mbps downstream and 3 Mbps upstream, or "25/3 Mbps"), for which service providers would report the geographic extent of their broadband service availability.[2] As proposed by Alaska Communications, these

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1 *Establishing the Digital Opportunity Data Collection*, WC Docket No. 19-195, Report and Order and Notice of Proposed Rulemaking, FCC 19-79 (rel. Aug. 6, 2019). These comments refer to the Report and Order portion of this document as the "*DODC Order*."

2 Alaska Communications Comments at 4-5.

speed tiers would apply without regard for the specific mix of technologies that the service provider uses to deliver the service.[3]

In a similar way, AT&T suggests that "fixed wireless providers should be required to report polygons in Commission-specified speed tiers."[4] Alaska Communications agrees that the Commission can and should extend its speed tier approach to the reporting of fixed wireless broadband service availability as well. Indeed, as proposed by Alaska Communications, a service provider could report a single polygon showing all locations that qualify for a particular speed tier, regardless of how the service is delivered.

After all, the speed of the available service is the most important criterion to the Commission and consumers alike in determining whether broadband is available. As AT&T points out, the Commission targets scarce universal service high-cost support primarily to census blocks lacking broadband that meets a certain speed threshold.[5] Most recently, the Commission has proposed to target support under Phase I of the Rural Digital Opportunity Fund ("RDOF") to census blocks that lack broadband offering a speed of 25/3 Mbps or greater.[6] While many such census blocks are subject to the CAF affordability, latency, and minimum usage requirements because the service is supported by CAF Phase II, the Commission did not propose to rely on those peripheral metrics in making its core RDOF eligibility assessment. Rather, the Commission proposes to rely primarily on Form 477 data showing whether 25/3 Mbps broadband is available in any part of the census block, regardless of price.[7]

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3 *Id.* at 5-7.

4 AT&T Comments at 6.

5 *Id.*

6 *Rural Digital Opportunity Fund*, WC Docket No. 19-126, Notice of Proposed Rulemaking, FCC 19-77 (rel. Aug. 2, 2019), at ¶ 48.

7 *Id.*

Alaska Communications agrees with AT&T that, once the Commission has defined the framework of speed tiers, it should allow each fixed wireless service provider individually to determine appropriate modeling criteria and assumptions to use to estimate the geographic areas where the appropriate speed of service is available.[8] Given the number of variables that affect the performance of a fixed wireless broadband service, only the service provider itself can assess how best to represent accurately the reach of its fixed wireless services.

While the "safe harbor" criteria proposed by the Wireless Internet Service Providers Association ("WISPA") represent a good start, they are insufficient without more. To be sure, it may make sense for the Commission to promote uniform modeling results by establishing a standard assumption regarding the height above ground of the antenna at the customer's premises.[9] It does not make sense, however, for the Commission to permit a service provider to base its coverage polygon solely on the modeled estimate of signal strength at the customer's premises and assumed antenna gain.

Rather, service providers will necessarily be required to consider broadband performance in developing their polygons. Currently, under the Form 477, a service provider reports that broadband is available in a census block "if the provider does, or could, within a service interval that is typical for that kind of connection—that is, without an extraordinary commitment of resources—provision two-way data transmission to and from the Internet with advertised speeds exceeding 200 kbps in at least one direction to end-user premises in the census block"[10] Whether

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8 AT&T Comments at 6-8.

9 *See* AT&T Comments at 7 (proposing 4.57 meters, equal to 15 feet); *Modernizing the FCC Form 477 Data Program*, WC Docket No. 11-10, *Ex parte* Letter from S. Jenell Trigg on behalf of WISPA (filed Oct. 22, 2018) ("WISPA *Ex Parte*"), Attachment: "FCC Form 477 Propagation Methodology for Fixed Wireless Providers," at 2 (proposing 10 meters).

10 *DODC Order* at ¶ 6.

the Commission maintains that threshold speed standard for reporting purposes or adopts another, therefore, the speed of the service is fundamental in assessing whether broadband is "available."

While the WISPA *Ex Parte* proposes a "safe harbor" where modeled signal strength exceeds a particular level,[11] broadband speed depends on many other factors. The WISPA *Ex Parte* itself acknowledges that, "differences in terrain, as well as software and/or third-party modeling services," and the "height of trees, buildings" will all affect signal strength estimates,[12] with an attendant impact on service speed. Even where signal strength is known, however, other factors influence service speed. The particular spectrum band and equipment being used, the link budget, and system load factors (*i.e.*, how many users will simultaneously share the available capacity of each base station radio), among other variables, will all affect the broadband speed available to the consumer.[13]

Alaska Communications agrees that, to facilitate transparency and permit independent review, service providers should disclose the key information they used in developing their service polygon for a given speed tier. These could include details of the specific Radio Network Planning Tool employed; the spectrum band, power level and antenna gain of the equipment being used; terrain and clutter information incorporated into the model; link budgets; or other factors, such as those suggested by AT&T.[14]

Alaska Communications, however, cautions that the Commission should not *require* service providers to incorporate any particular data into their models. Small providers, such as Alaska Communications, may not have access to the same modeling tools that are used by large

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11 WISPA *Ex Parte*, Attachment at 2.

12 *Id.*, Attachment at 3.

13 AT&T Comments at 8; *Spectrum Horizons*, ET Docket No. 18-21, First Report and Order, FCC 19-19, 34 FCC RCD 1605 (2019), at 3 (observing that high frequency spectrum bands are better suited to high data rates).

14 AT&T Comments at 6-8.

providers, such as AT&T. It would not be reasonable for the Commission to require small service providers to incur the great expense of the most sophisticated modeling tools to develop polygons to describe extremely small geographic markets, such as the Bush villages of Alaska. Indeed, the cost of obtaining such Commission-mandated mapping capabilities itself could become a significant deterrent to broadband deployment, given the limited revenue available in such small markets to meet that cost. Such a result would undermine the Commission's "top priority" to promote broadband deployment.[15] Rather, as AT&T advocates, the Commission should define what the maps must show, and let the service providers decide how to create their maps, so long as they disclose how the maps were generated.[16]

B. The Commission Should Not Expand Its Broadband Data Collection Framework to Include Pricing Data

The Commission adopted and is implementing its new broadband availability reporting framework because the level of detail filed by service providers on Forms 477 no longer is sufficiently granular to permit the Commission to "direct [universal service] funding to the 'gaps' in broadband coverage – those areas where some, but not all, homes and businesses have access to modern communications services."[17] The Commission therefore created the DODC "to produce broadband deployment maps that will allow the Commission to precisely target scarce universal service dollars to where broadband service is lacking."[18]

While Alaska Communications understands why the Commission would find granular *deployment* data useful for that purpose, the Commission does not need broadband *pricing* data

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15 *Rural Digital Opportunity Fund*, WC Docket No. 19-126, Notice of Proposed Rulemaking, FCC 19-77 (rel. Aug. 2, 2019), at ¶ 1.

16 AT&T Comments at 3.

17 *DODC Order* at ¶ 1.

18 *Id.* at ¶ 10.

to engage in such targeting of support. Indeed, the Commission considered and rejected such a request in the *DODC Order* itself,[19] and should not reverse that decision here. Rather, the Commission consistently has made clear that it will not use federal universal service support to subsidize competition,[20] and harbors grave concerns where such support is used to overbuild existing networks,[21] even if the available broadband service does not comport with the Commission's CAF affordability benchmarks.[22]

Therefore, Alaska Communications opposes requests in the record to expand the requirements of the DODC to include broadband pricing information.[23] *First,* while NAOTI/PK, the California PUC, and others argue that the Commission should collect pricing data because "affordability" is an important predictor of broadband adoption,[24] those data are not needed to achieve the purpose of the DODC. Rather, the Commission already tracks broadband

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19 *DODC Order* at ¶ 12, n.24 (stating that, "we decline OTI's request to further expand our collection" to include broadband affordability and pricing information, data on end user demographics, performance data that measures actual broadband speeds and latency, and vulnerability and resiliency network data).

20 *E.g., Connect America Fund*, WC Docket No. 10-90, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, 26 FCC Rcd 17663 (2011) ("*Transformation Order*"), at ¶ 149, n.238 ("Support should be used to further the goal of universal voice and broadband, and not to subsidize competition in areas where an unsubsidized competitor is providing service."); *Id.* at ¶ 502 (eliminating the identical support rule for CETCs).

21 *See, e.g., Modernizing the E-Rate Program for Schools and Libraries*, WC Docket No. 13-184, Public Notice, "Wireline Competition Bureau Seeks Comment on Texas Carriers' Petition to Prohibit Use of E-Rate Funds to Build Fiber Networks in Areas Where Fiber Networks Already Exist," DA 19-493, 34 FCC Rcd 3833 (Wir. Comp. Bur. 2019); Letter from Commissioner Mike O'Rielly to Ms. Jacqui Clay, Superintendent, Cochise County Schools (Aug. 26, 2019), *available at:* https://docs.fcc.gov/public/attachments/DOC-359287A1.pdf.

22 *Connect America Fund*, WC Docket No. 10-90, Public Notice, "Wireline Competition Bureau Announces Results of 2019 Urban Rate Survey for Fixed Voice and Broadband Services, Posting of Survey Data and Explanatory Notes, and Required Minimum Usage Allowance for Eligible Telecommunications Carriers," DA 18-1280, 33 FCC Rcd 12316 (2018), at 3.

23 *See, e.g.,* Joint Comments of New America's Open Technology Institute and Public Knowledge ("NAOTI/PK") at 2-5; Comments of Next Century Cities *et al.* at 7; Comments of the California PUC at 21;

24 NAOTI/PK Comments at 2-3; California PUC Comments at 21; Free Press Comments at 8.

affordability using the urban rate survey, and directly caps voice and broadband rates in high-cost areas supported by universal service, based on those data.[25]

Second, the reporting of pricing information would dramatically increase the reporting burden on service providers. Prices for broadband service do not exist as a series of discrete, static point amounts. Prices are likely to cover a range of rates within a given speed tier, depending on the precise bandwidth or service level commitments that the customer purchases. Even for a given bandwidth, pricing is likely to vary depending on whether the customer makes a term commitment, potential variation in usage allowances, and whether the customer has taken advantage of a transitory price promotion. It is unlikely that consumers or the Commission could derive meaningful price comparisons among the broadband services offered in a given area based on data filed in service providers' semiannual reports.

Moreover, in the case of business data services, broadband pricing information is likely to be highly confidential and competitively sensitive. When such data are filed with the Commission, they are virtually always subject to a protective order or a request for confidential treatment grounded, among other reasons, on the fact that they are "trade secrets and commercial or financial information" of the service provider, and therefore exempt from disclosure under Section 552(b)(4) of the Freedom of Information Act.[26] Such information is also explicitly protected from public disclosure under Section 0.457(d) of the Commission's rules.[27]

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[25] *Connect America Fund*, WC Docket No. 10-90, Order, DA 13-598, 28 FCC Rcd 4242 (Wir. Comp. Bur. 2013), at ¶¶ 1-2.

[26] 5 U.S.C. § 552(b)(4).

[27] 47 C.F.R. § 0.457(d).

Third, markets for broadband services are highly dynamic and prices tend to change rapidly and fall quickly.[28] As a result of competition, both between providers of fixed broadband services and intermodal competition between fixed and mobile broadband services, broadband prices can vary rapidly, further affected by periodic, time-limited promotional offers. As a result, any pricing information filed with the service availability polygon is likely to be out of date well before the next filing is due. Consumers would likely be misled if they were to attempt price comparisons among broadband offerings using such data. Rather, the best source of current pricing information is, as NAOTI/PK recognizes, publicly available plan and pricing information available at the time the consumer wants to purchase service, not data previously filed with the Commission that will quickly be out of date.[29]

For these reasons, pricing data reported to the Commission in this context are unlikely to be useful to "researchers, policymakers, potential subscribers, and more"[30] in understanding broadband market dynamics, or comparison shopping for service. And, in any event, none of these commenters have explained why the Commission should expend its own scarce resources to become the repository and clearinghouse for such information.[31]

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[28] *Business Data Services in an Internet Protocol Environment*, WC Docket No. 16-43, Report and Order, FCC 17-43, 32 FCC Rcd 3459 (2017), at ¶ 4 (finding the business data services market to be "dynamic and increasingly competitive"), *aff'd in part, vacated and remanded in part sub. nom Citizens Telecomms. of Minn., LLC v. FCC*, 901 F.3d 991 (8th Cir. 2018); *Business Data Services in an Internet Protocol Environment*, WC Docket No. 16-43, *Ex parte* Letter from Karen Brinkmann, Counsel to Alaska Communications (filed Sept. 2, 2016), Attachment: "Declaration of William Bishop on Behalf of Alaska Communications," at 2 (finding that prices for business data services had declined twenty to thirty percent annually over the past 6-9 years).

[29] NAOTI/PK Comments at 4 (citing testimony of Tim Donovan, Senior Vice President, Competitive Carriers Association, April 24, 2019).

[30] Next Century Cities Comments at 7.

[31] *Cf. Petition of AT&T Inc. For Forbearance Under 47 U.S.C. § 160 From Enforcement of Certain of the Commission's Cost Assignment Rules*, WC Docket No. 07-21, Memorandum Opinion and Order, FCC 08-120, 23 FCC Rcd 7302 (2008), at ¶ 32 (finding that the Commission must grant forbearance unless it can establish a "current, federal need" for the statute or regulation in question); *Verizon and*

Conclusion

For the foregoing reasons, Alaska Communications urges the Commission to adopt the flexible approach to reporting fixed wireless service coverage described herein, and not to require service providers to report pricing of their broadband services as part of the DODC.

Respectfully submitted,

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AT&T v. FCC, 770 F.3d 961, 972 (D.C. Cir. 2014) ("We have held that the Commission's definition of necessary – that there is a strong connection between the rule in question and the agency's purpose – is one to which we defer . . . . But the Commission itself has stated that it must have a 'current need' to maintain a statutory requirement or a challenged regulation.") (citation omitted).